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| **IPND DATA ACCESS AGREEMENT** |

**IPND MANAGER DETAILS**

|  |  |  |
| --- | --- | --- |
| **Name** | **TELSTRA** | **(Telstra / IPND Manager)** |
| **ACN** | **051 775 556** |  |

**DATA USER DETAILS**

|  |  |  |  |
| --- | --- | --- | --- |
| **Name****ACN** | **[insert]** |  **(Data User)** |  |
|  |  |  |  |
| **Address** | **[insert]** |  |  |
|  |  |  |  |

**Background:**

1. Telstra is required by clause 10(1) of the Licence Conditions to establish and maintain an integrated public number database.
2. The parties agree to enter into this agreement which sets out the terms and conditions on which the Data User may access and use IPND Data.

**DATE:** The date the last party signs

**AGREED BY DATA USER AND TELSTRA**

|  |  |
| --- | --- |
| **Signed for Data User by its authorised representative** | **Signed for Telstra by its authorised representative** |
| **Signature #S\_CUST1#** | **Signature #S\_TEL1#** |
| **Print Name #N\_CUST1#**  | **Print Name #N\_TEL1#** |
| **Date #D\_CUST1#** | **Date #D\_TEL1#** |
| **Position #P\_CUST1#** | **Position #P\_TEL1#** |
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# Definitions

## In this agreement unless the contrary intention appears, the following words have these meanings:

“**ACMA”** means the Australian Communications and Media Authority.

**“ACIF”** means the Communications Alliance, formerly known as the Australian Communications Industry Forum. A reference in this agreement to a code or standard developed by the ACIF includes any code or standard developed by Communications Alliance.

**“Act”** means the Telecommunications Act 1997 (Cth).

**“Application Form”** means the ‘Application of Intent to use IPND’ form signed by the Data User and provided to the IPND Manager.

**“Approved Purpose”** has the same meaning as in the IPND Code.

“**Australian Consumer Law**” means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

“**Authorisation**” means authorisation granted by ACMA for the purposes of section 285(1A)(d) of the Act for the Data User to use and disclose certain Customer Data as defined in the IPND Scheme for particular purposes set out in the Act, and, for the avoidance of doubt, for PND Publishers includes Final Authorisation and Provisional Authorisation. “**Authorise**”, “**Authorised**” and “**Authorisation**” have the corresponding meanings.

**“Bulk Refresh”** means a complete transfer from the IPND (in one or more transfers) of all the IPND Data relevant to a Data User at that point in time, in order to refresh and replace the Data User’s version of that data.

**“Business Day”** means:

### any day other than a Saturday, Sunday; and

### a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

“**Carriage Service Provider**” has the meaning given to it by section 87 of the Act.

**“Charges”** means the charges set out in Schedule 2 and other charges as notified by the IPND Manager to the Data User in accordance with clause 15.

**“Commencement Date”** means the date this agreement is signed by the last party.

## **“Confidential Information”** of a party means any information, know-how, ideas, concepts, technology, marketing and commercial knowledge of a confidential nature provided to or acquired by another party under this agreement, but excludes any information which is in or comes into the public domain otherwise than as a result of a breach by the discloser of the terms of this agreement or a breach of confidence owed to Telstra by a third party.

## **“Customer**” means the end-user who has a Public Number and who is supplied with a carriage service by a Carriage Service Provider.

## **“Customer Data”** has the same meaning as ‘Public Number Customer Data’ in the IPND Code.

## **“Data”** means the Public Number data and other data required to be supplied to the IPND by Carriage Service Providers pursuant to Schedule 2 to the Act.

## **“Data Access Purposes”** meansone or more of the purposes specified in the Data User’s Application Form for which the Data User has been authorised to obtain Customer Data from the IPND.

## **“Data User”** means the party identified as such on the front page of this agreement.

## **“Directory Assistance Services”** has the meaning given in section 7 of the Act.

**“Enforcement Agency”** has the meaning given in the *Telecommunications (Interception and Access) Act 1979* (Cth).

“**Final Authorisation**” has the meaning given in the IPND Scheme.

## **“Force Majeure Event”** means a circumstance beyond the reasonable control of an affected party.

## **“Industry Standard”** has the meaning given in section 108 of the Act.

## **“IPND”** means the Integrated Public Number Database established and maintained by the IPND Manager pursuant to the Licence Conditions.

## **“IPND Code”** means all codes of practice and guidelines relating to the Integrated Public Number Database developed in accordance with Part 6 of the Act (which includes, as at the Commencement Date, ACIF C555:2020 - Integrated Public Number Database (IPND) Industry Code and ACIF G619:2017 – IPND Data).

## **“IPND Contractor”** means a person appointed by the IPND Manager to manage, maintain and administer the technical infrastructure (including the hardware and databases) required to support the IPND.

## **“IPND Data”** means Public Number data (including any tags or restrictions applicable to that data), and all other data contained in the IPND.

## **“IPND Data File Guidelines”** means the user guidelines provided to the Data User by the IPND Manager as amended by the IPND Manager from time to time.

## **“IPND Manager”** means Telstra, in its capacity as the manager of the IPND.

## **“IPND Scheme”** means the Telecommunications Integrated Public Number Database Scheme 2017 in force under section 295A of the Act.

## **“Law”** is any laws including any common law, statute, regulation, proclamation, ordinance, by-law, mandatory code of conduct, writ, judgment and any award of other industrial instrument.

## **“Licence Conditions”** means the Carrier Licence Conditions (Telstra) Declaration 1997.

## **“Location Dependent Carriage Service” (LDCS)** has the meaning given in the Licence Conditions.

## **“Minister”** means the minister administering the Act.

## **“Ministerial Instrument”** means any legislative instrument made by the Minister, developed in accordance with Subdivision B of Division 3A of Part 13 of the Act.

## **“Numbering Plan”** has the meaning given in section 455 of the Act.

## **“Operator Assistance Services**” has the meaning given in the IPND Code.

## **“Operator Services”** has meaning given in the Licence Conditions.

## **“Personal Information”** means all personal information (as defined in the Privacy Act) which is received or learnt by a party from any source as a consequence of or in the course of exercising or performing its rights and obligations under this agreement.

## **“Postcode Method”** means the extraction of IPND Data for a Data User from the IPND by the “Directory Address Postcode” field identified by the ACMA as relevant to the Data User. For LDCS Data Users, the Directory Address Postcode field is used to extract the IPND Data, but the Directory Address Postcode field is not provided to LDCS Data Users as part of the Supplied Data.

## **“PND Publisher”** has the same meaning as *public number directory publisher* in theIPND Scheme.

## **“Privacy Act”** means the Privacy Act 1988 (Cth).

## **“Privacy Laws”** means:

### the Privacy Act; and

### any other Laws and binding industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to Personal Information, which is applicable to a party or which the IPND Manager notifies the Data User is a Privacy Law for the purposes of this agreement.

## **“Provisional Authorisation”** has the meaning given in the IPND Scheme.

## **“Public Number Directory” (PND)** has the meaning given in section 285 of the Act, as may be varied by a Ministerial Instrument from time to time.

## **“Public Number”** means a number specified in the Numbering Plan required by subsection 455(3) of the Act.

## **“Researcher”** has the meaning given in the IPND Scheme.

## **“Reverse Directory”** means a directory of Public Numbers which has the functionality to enable a person who knows Customer’s number or address to readily identify the Customer’s name and/or other details.

## **“Security”** means any security provided by the Data User to the IPND Manager under this agreement and includes any additional, replacement or alternative form of security.

## **“Special Data Access Request”** means where the Data User lodges a request with the IPND Manager in connection with the Data Access Purposes for the provision of data in a format or output that does not comply with the   [Technical Requirements](https://www.telstra.com.au/content/dam/tcom/personal/consumer-advice/ipnd/data-provider-information-pack/ipnd-data-users-and-data-providers-technical-requirements.pdf) . This includes but is not limited to the addition or removal of fields to reporting, development of specialised sampling algorithms or modification of existing Data User reports. Additional Charges will apply to any Special Data Access Request.

##  **“Supplied Data”** means:

### in relation to a Data User who is a PND Publisher with Provisional Authorisation, a restricted version of the Customer Data which is detailed in the Technical Specification as being relevant to the Data Access Purposes which is supplied to enable the Data User to produce a sample PND for the sole purpose of applying to the ACMA for Final Authorisation; and

### in relation to a Data User who holds a Final Authorisation,

the Customer Data which is described in the Technical Specification as being relevant to the Data Access Purposes and which is derived directly from the IPND using the Postcode Method; and

any Unlisted Numbers supplied or to be supplied to the Data User under clause 4.6.

## **“Suppressed Address”** means an address relating to a listed number, which address the Customer has requested not be published in any directory.

**“Taxes”** means taxes, levies, imposts, duties, excise and charges, deductions or withholdings, however described, imposed by Law or a government authority or agency, including any related interest, penalties, fines or other charges or other expenses, other than GST and any tax imposed on or calculated having regard to net income.

## **“Tax Invoice”** has the meaning given in the GST Act.

## **“Technical Requirements”** means the Integrated Public Number Database (IPND) Data Users and Data Providers Technical Requirements for IPND, a copy of which has been provided to the Data User by the IPND Manager in accordance with the IPND Code, which may be amended by the IPND Manager from time to time.

## **"Unlisted Number"** means a Public Number that is:

### a mobile number, unless the Customer and the Carriage Service Provider that provides the mobile service to the Customer agree that the number will be listed;

### a geographic number that provides the services for originating or terminating carriage services to the Customer that the Customer and the Carriage Service Provider agree will not be included in any directory;

### the number of a public payphone;

### a number that gives access to a private telephone exchange extension that the Customer has requested not be included in a Public Number Directory; or

### any other number that may be treated as an unlisted number as a result of a change to a Law (for example, a change to the Numbering Plan).

## In this agreement unless the contrary intention appears:

### the singular includes the plural and vice versa; and

### a reference to an agreement or another instrument includes any variation or replacement of either of them; and

### a reference to a recital, annex or schedule is a reference to a recital, annexure or schedule to this agreement and a reference to this agreement includes a recital, annex or schedule; and

### a reference to a statute, ordinance, code, standards or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and

### the word person includes a firm, body corporate, unincorporated association or an authority; and

### a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns; and

### a reference to a period of time which commences on a given day or the day of an act or event is to be calculated inclusive of that day; and

### if the day on which the payment of money falls due is not a Business Day, the due date shall be deemed to be the next Business Day; and

### a reference to a related body corporate of a party has the same meaning as in the Corporations Act 2001 (Cth); and

### a reference to a third person or a third party is a reference to a person who is not a party to this agreement; and

### an expression which is given a particular meaning in the Act has that meaning in this agreement; and

### consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably.

## Headings are included for convenience and do not affect the interpretation of this agreement.

# Not Used

## Not used.

# Relationship and Grant of Access

## Nothing in this agreement creates a relationship of partnership or principal and agent between the IPND Manager and the Data User, and the parties expressly deny any such relationship.

## The Data User must not:

### represent itself as being a partner or agent of, or give any undertakings on behalf of, Telstra or the IPND Manager;

### make any false or misleading statements in relation to the IPND, the IPND Manager or Telstra;

### state or infer that the Data User’s actual use of the Supplied Data has been approved or authorised by Telstra or the IPND Manager; or

### unless to do otherwise would be misleading or would breach a Law (including the Australian Consumer Law), attribute responsibility for, or acts or omissions to, Telstra or the IPND Manager, in relation to:

#### the accuracy or currency of Supplied Data;

#### the authorisation of Data Users, or their use of Supplied Data; or

#### the origin or ownership of Customer Data in the IPND.

## The IPND Manager agrees to supply the Supplied Data to the Data User and to supply updates on a daily basis in accordance with the Technical Requirements.

## The Data User must:

### obtain any necessary Authorisation prior to requesting the IPND Manager provide the Supplied Data;

### maintain all necessary Authorisations and must provide a copy of any Authorisation (including any variations made to that Authorisation) to the IPND Manager promptly upon receiving it from the ACMA; and

### not use the Supplied Data other than for the Data Access Purposes and must comply with any ACMA conditions attached to the Authorisation.

# Access to Data

## The Data User must comply with the IPND Data File Guidelines and the Technical Requirements.

## The Data User is responsible for ensuring that the communications link chosen by it for access to the Supplied Data is suitable for that purpose and compatible with the Technical Requirements. The Data User must provide to the IPND Manager or, if appointed, the IPND Contractor, details of the communications link to be used in accessing the Supplied Data at the time of, or prior to, registering as a Data User.

## The Data User is responsible for ensuring the technical functionality of the communications link and must replace or repair any link which breaks down or becomes unsuitable for supplying the Supplied Data, at its own cost. If the communications link does not meet the Technical Requirements, it may be unable to access any Customer Data and the IPND Manager may impose additional support charges as set out in Schedule 2.

## The Data User acknowledges that supplied Data will be provided in accordance with the Technical Requirements and the IPND Data transfer file format described in the Technical Requirements.

## Subject to clause 4.6, the Data User will not be provided with any IPND Data relating to any Unlisted Number.

## The IPND Manager or, if appointed, the IPND Contractor, may disclose Unlisted Numbers to the Data User where a number changes status from listed to unlisted, but only for the purposes of the Data User updating its database to remove the listings and ensuring that such numbers are not published in any directory produced by the Data User.

## The Data User must not access or seek to access any IPND Data other than Supplied Data through or by means of the communications link referred to in clause 4.2.

## The Data User must not permit, assist or allow any third party to access the IPND Data or Supplied Data through or by means of the communications link referred to in clause 4.2.

## The Data User acknowledges that the IPND Manager may supply a Bulk Refresh of the Supplied Data to the Data User at any time on reasonable notice, which the Data User must accept. From the date of supply of a Bulk Refresh, the Data User must use the refreshed Supplied Data for any future use in accordance with this agreement.

# Data User Obligations

## The Data User must:

### (other than a Data User who is accessing IPND Data solely as a Researcher) comply with the IPND Code (and the Data User acknowledges that it has received a copy of the IPND Code from the IPND Manager); and

### at all times comply with:

#### the Law, including the Act;

#### the conditions of any Authorisation granted to it;

#### the IPND Scheme to the extent to which it is applicable to the Data User;

#### any applicable Ministerial Instruments;

#### in the case of a Data User who is not a Carrier, Carriage Service Provider or PND Publisher (including any Researcher who is not a Carriage Service Provider), the obligations of ACIF C555:2020 - Integrated Public Number Database (IPND) Industry Code apply as if that Data User was a “Data User” for the purposes of that IPND Code; and

#### all Industry Standards developed by the ACMA and ACIF in relation to the IPND.

## The Data User must ensure that it does not publish or permit, assist or allow a third party to publish in any form:

### any address in the Supplied Data which is tagged as or which it knows or believes to be a Suppressed Address; or

### any number which is tagged as or which the Data User knows or ought reasonably to know is an Unlisted Number.

## If the Supplied Data is used or intended to be used for the publication or maintenance of a Public Number Directory, the Data User must use the most current data practicable at the time of publication or maintenance.

## The Data User must notify the IPND Manager or, if appointed, the IPND Contractor without undue delay where it becomes aware of any error or potential error in the Supplied Data, in accordance with the procedures set out in the Technical Requirements.

# Unapproved uses

## Subject to clause 6.1, the Data User must not use or disclose, or permit the use or disclosure by any person of the Supplied Data for and must take all reasonable steps to prevent the Supplied Data being used for any purpose other than the Data Access Purpose.

## The Data User may disclose the Supplied Data as required by law, subject to the Data User notifying the IPND Manager immediately if it becomes aware that such a disclosure may be required.

## For the avoidance of doubt, and without limiting this clause 6, the Data User must not use or disclose, or permit the use or disclosure by any person of the Supplied Data, and must take reasonable steps to prevent the Supplied Data being used:

### in the production or publication of a Reverse Directory;

### to append telephone numbers to name and/or address information in databases that are not associated with a Data Access Purpose;

### to compile, populate, update and verify databases that are unrelated to, or used for, any purpose other than a Data Access Purpose;

### for the purpose or for purposes including the purpose of sending marketing or promotional material to any person;

### to develop, compile, populate, update or verify (including, but not limited to data washing of) mailing lists or databases to be used for marketing or telemarketing purposes;

### to analyse or collate information such that it could be used to obtain information about new services or moved services;

### to obtain information about movement between Carriage Service Providers;

### for direct or indirect marketing;

### for any use specified by ACMA as a use to which IPND Data is not to be put to;

### for identity verification purposes and/or purposes associated with fraud detection; and

### for credit verification, tracing or location of individuals absconding prior to the repayment of debts or borrowings or any other manner of person being sought for debt collection.

# Audit by IPND Manager

## On written notice to the Data User, the IPND Manager may undertake an audit of the Data User’s use or disclosure of Supplied Data and access to the IPND, to ensure that the Data User’s use, disclosure and access complies with applicable laws and with this agreement.

## The audit will be conducted by the IPND Manager or, where specifically requested by the Data User, an independent third party reasonably acceptable to the IPND Manager. Where the audit is to be conducted by an independent third party, the Data User must bear and pay all of the third party’s costs and expenses associated with the audit.

## The Data User must comply with any reasonable request from the IPND Manager or the independent third party (as applicable) for:

### relevant information about the Data User’s use or disclosure of the Supplied Data and access to the IPND; and/or

### access to the Data User’s premises, staff, processes, systems and/or records for the purposes of conducting the audit under clause 7.1,

### within 10 Business Days of receiving the IPND Manager’s or independent third party’s request.

## Unless otherwise agreed, an audit conducted under this clause 7 must:

### be conducted during the Data User’s business hours, at a time agreed between the Data User and the IPND Manager (but must be within a reasonable time of the notice given under clause 7.1);

### not unreasonably interfere with the Data User’s business activities; and

### be conducted in compliance with the Data User’s workplace policies as notified to the IPND Manager or independent third party, including any applicable confidentiality and security policies.

# Security of Data

## The Data User must take all reasonable steps to ensure that the Supplied Data is protected from loss and from unauthorised access, use, modification or disclosure, including without limitation undertaking any staff training as may be required.

## Subject to strictly complying with clause 8.3, the Data User may supply or disclose the Supplied Data to an agent or contractor for the Data Access Purpose for which the Data User has been granted access to the Supplied Data in order for the agent or contractor to:

### produce and/or publish a Public Number Directory on behalf of the Data User (where the Data User is a PND Publisher), the Public Number Directory must be produced and/or published in the Data User’s name;

### develop a product for use with a Directory or Operator Assistance Services, or to assist in the supply of a Directory or Operator Assistance Services, that product and/or service must be developed and supplied in the Data User’s name, and solely for use by the Data User to supply a Directory or Operator Assistance Service (as relevant);

### develop a product for use with a LDCS, or to assist in the supply of a LDCS, that product must be developed in the Data User’s name and solely for use by the Data User to supply a LDCS, and that assistance must be supplied only to enable the Data User to supply a LDCS in the Data User’s name; or

### assist in the conduct of research by a Data User who is a Researcher, the output of that assistance must only be used by the Data User, in its own name, for the research project for which it has been granted access.

## Before supplying or disclosing the Supplied Data to an agent or contractor for the Data Access Purposes, the Data User must obtain an enforceable undertaking from the agent or contractor:

### not to use the Supplied Data for any purpose other than the Data Access Purpose for which the Data User has been granted access to the Supplied Data, or in a way which would not comply with the requirements of clause 8.2;

### not to supply or disclose the Supplied Data to any other person; and

### to comply with Privacy Laws and provisions having the same effect as clause 9;

### to destroy the Supplied Data:

#### when it is no longer required for the Data Access Purpose;

#### when this agreement expires or is terminated; or

#### when required to do so by the Data User.

## The Data User must immediately provide the IPND Manager with a copy of the undertaking referred to in clause 8.3, on request by the IPND Manager.

## Except as required by law, when this agreement is terminated, or when the Data User no longer requires the Supplied Data for the Data Access Purposes or, in the case of Unlisted Numbers supplied under clause 4.6, when the Data User no longer requires the Supplied Data for the purposes of that clause, the Data User must:

### permanently delete or destroy the Supplied Data; and

### ensure that any person to whom the Data User has supplied or disclosed the Supplied Data also permanently deletes or destroys the Supplied Data

### and must provide to the IPND Manager (on request) written certification from a Director or other authorised officer of the Data User that any Supplied Data has been permanently deleted or destroyed.

## The IPND Manager may use information provided by the Data User under or in connection with this agreement as required to exercise its rights or perform its obligations under this agreement or at law, and may disclose that information, as required (including for the purposes of section 284 of the Act), to ACMA, the Australian Competition and Consumer Commission, the Telecommunications Industry Ombudsman, an Enforcement Agency, or a government agency or department. (For example, the IPND Manager may disclose information to ACMA for the purposes of ACMA considering an Authorisation decision.)

# Personal Information

## This clause applies despite anything else in this agreement.

## The Data User must comply with all Privacy Laws in relation to the Personal Information, whether or not the Data User is an organisation bound by the Privacy Act.

## The Data User must not do anything or omit to do anything with the Personal Information that will cause Telstra or the IPND Manager to breach its obligations under a Privacy Law.

## The Data User must:

### (a) collect, store, use, disclose or otherwise deal with the Personal Information as reasonably directed by the IPND Manager, to the extent that the direction is reasonably required to ensure that the Data User is in compliance with a Privacy Law;

### (b) comply with clause 7 in relation to any audit to assess or audit the Data User’s compliance with this clause 9;

### (c) provide all reasonable assistance as required by the IPND Manager to assist Telstra in complying with its obligations under any Privacy Law, provided that the requested assistance will not cause the Data User to be in breach of any of its obligations under any Privacy Law; and

### (d) notify the IPND Manager if it becomes aware of any breach or alleged breach of its obligations under this clause and comply with any reasonable direction from the IPND Manager with respect to remedying that breach.

## The Data User must not transfer Personal Information outside of Australia except where:

## (a) the Data User provides reasonable prior written notice to the Attorney General’s Department and the Department of Communications and the Arts of the intention to transfer, and complies with any direction of the Attorney General’s Department or the Department of Communications and the Arts in relation to that transfer;

## (b) the transfer is permitted by Privacy Laws; and

## (c) if the Data User is a PND Publisher or Researcher, the Data User also complies with the Telecommunications (Integrated Public Number Database Scheme – Conditions for Authorisations) Determination 2017 (No. 1).

## The Data User acknowledges that it has not relied on any information from the IPND Manager or Telstra to the Data User as advice regarding the Data User’s obligations under the Privacy Laws.

# General Indemnity

## The Data User indemnifies Telstra, the IPND Manager and the IPND Contractor (if any) from and against all actions, proceedings, suits, claims, demands, damages, costs, losses (direct, indirect or consequential), expenses and charges suffered or incurred by Telstra, the IPND Manager and the IPND Contractor either directly or indirectly arising out of or in connection with:

### any breach of this agreement by the Data User;;

### any third party claim or action against the Data User; and

### any claim or action against Telstra, the IPND Manager and/or the IPND Contractor arising directly or indirectly out of any negligence or wilful act or omission of the Data User or any of its representatives;

### the use of the Supplied Data by or on behalf of the Data User (whether or not such Supplied Data was accurately used by the Data User), including but not limited to:

### the Data User using the Supplied Data (excluding Unlisted Numbers supplied under clause 4.6) for any purpose other than Data Access Purposes;

### the Data User using the Supplied Data without any necessary Authorisation, or for a Data Access Purpose for which it does not hold the necessary Authorisation;

### another person to whom the Data User has directly or indirectly provided the Supplied Data using Supplied Data other than to search by the name and optionally the address (or part thereof) of a Customer to obtain the Customer’s telephone number;

### the Data User publishing any Suppressed Address or disclosing details of any Suppressed Address to another person or enabling the publication by any person in any directory or directory product (including, for the avoidance of doubt, a PND) of a Suppressed Address;

### the Data User disclosing or publishing in any directory or directory product (including, for the avoidance of doubt, a PND) any number which is tagged as or which it knows or has reason to believe is an Unlisted Number;

### the Data User using or permitting another person to use any Unlisted Numbers supplied to the Data User by the IPND Manager under clause 4.6 for any purpose other than updating the Data User’s database to remove the listings and/or ensuring that such numbers are not published in any directory produced by the Data User;

### the Data User publishing or producing a Reverse Directory or assisting, permitting or allowing the Supplied Data to be used in the publication or production of a Reverse Directory by another person;

### .

#  Technical Advice

## The Data User may contact the IPND Manager or, if appointed, the IPND Contractor for advice or instruction on the communications link or any other technical matter relating to the Supplied Data.

# Term, Termination and Suspension

## This agreement commences on the Commencement Date and unless it is terminated earlier in accordance with its terms, continues in full force and effect for five years from the Commencement Date (**Initial Term**).

## At the end of the Initial Term, the agreement will continue for successive 12 month periods (each, a **Subsequent Term**) unless the agreement is terminated earlier in accordance with its terms.

## This agreement automatically terminates on:

### in the case of a Data User who is a PND Publisher with Provisional Authorisation, the date on which the IPND Manager receives notice from ACMA of the expiry or revocation by ACMA of the Provisional Authorisation;

### in the case of a Data User who is a PND Publisher with Final Authorisation, the date on which the IPND Manager receives notice from ACMA of the revocation by ACMA of the Final Authorisation;

### in the case of a Data User who is a Researcher:

#### the expiry of the period of Authorisation specified by ACMA for that research project unless the IPND Manager receives notice from ACMA that the Researcher’s Authorisation has been extended, in which case, this agreement continues in full force and effect until the expiry of the period of extension notified by ACMA; or

#### the date on which the IPND Manager receives notice from ACMA of the revocation by ACMA of the Researcher’s Authorisation.

## If the Minister determines pursuant to section 472 of the Act that a person other than Telstra is to provide and maintain an integrated public number database then this agreement will terminate in accordance with the Ministerial direction which appoints that person. If the Ministerial direction is silent as to the date that the new person is to provide and maintain the integrated public number database this agreement will continue until the Data User is notified by the IPND Manager that Telstra is satisfied that the new integrated public number database manager has taken over the provision and maintenance of the integrated public number database sufficiently that Telstra as the IPND Manager is no longer performing any functions under this agreement.

## The IPND Manager may, acting reasonably, by written notice to the Data User immediately terminate the agreement if the Data User does not comply with clauses 5, 6, 7, 8 or 9 of this agreement.

## The Data User may terminate the agreement by 14 days written notice if there is a change to the IPND Code, IPND Scheme or a Ministerial Instrument which affects the uses to which the Data User may put IPND Data such that the value of the IPND Data to the Data User is materially reduced.

## Either party may terminate this agreement at any time by giving at least 25 days’ notice of termination to the other party if:

### that other party is in breach of any of its material obligations under this agreement and, if that breach is capable of remedy, does not remedy that breach within 25 days after receipt of a written notice to do so;

### steps are taken or legal proceedings are started for:

#### the winding-up, dissolution, liquidation or re-organisation of that other party, other than to reconstruct or amalgamate it while solvent; or

#### the appointment of a controller, receiver, administrator, official manager, trustee or similar officer in respect of that other party or of any of its revenues and assets; or

### that other party seeks protection or is granted protection from its creditors, under any applicable legislation.

## The Data User may terminate this agreement for any reason at any time by giving at least 120 days’ notice of termination to the IPND Manager.

## Termination or expiry of this agreement for any reason does not extinguish or otherwise affect:

### any rights of either party against the other which accrued prior to the time of the termination; or

### the provisions of this agreement which by their nature survive termination (including without limitation clauses 5.1, 6.1, 7.1, 8.1, 9, 10, 11, 12, 15, 16, 17 and 20); or

### the right of the IPND Manager to use or disclose (pursuant to the terms and conditions of this agreement) Data already provided to it before termination.

## On termination of this agreement:

### access of the Data User to the IPND will immediately cease;

### the Data User must immediately cease using the Supplied Data;

### the Data User must comply with clause 8.5;

### the Data User must within 14 days pay any amounts which it owes to the IPND Manager under this agreement as at the date of termination and will not be entitled to repayment of any amounts already paid under the agreement; and

### the Data User must comply with clause 11.6.

## For the avoidance of doubt, any previous agreement between the IPND Manager and the Data User to supply and acquire data from the IPND terminates on the Commencement Date of this agreement.

## Without prejudice to the IPND Manager’s rights to terminate this agreement, the IPND Manager may stop supplying the Supplied Data to the Data User and to stop supplying updates on a daily basis if, acting reasonably, the IPND Manager suspects that:

## (a) the Data User has not complied with, or is not complying with, or is likely not to comply with this agreement; or

## (b) the Data User’s Authorisation has expired, been revoked or has otherwise ended

##  but if the Data User can satisfy the IPND Manager as to its compliance with the terms of this agreement, the IPND Manager will reinstate supply of data and updates but may impose additional terms on the Data User as a condition of so doing.

# Regulatory events

## Without prejudice to any other rights of the IPND Manager, if there is a change to any Law, including to the Act, the IPND Code, IPND Scheme or a Ministerial Instrument, which affects:

## (a) the IPND Manager’s ability to comply with this agreement and/or supply the Supplied Data; or

## (b) the cost to the IPND Manager of complying with this agreement and/or supplying the Supplied Data,

## the IPND Manager may, at its election:

## (c) exercise its rights under this agreement to vary the Charges or add new Charges;

## (d) by written notice, vary this agreement to address the changes; or

## (e) immediately terminate this agreement.

# Not Used

14.1 Not used.

# Charges

## The Data User agrees to pay the IPND Manager the Charges within 14 days of the date of the relevant invoice (“**Due Date**”).

## If an invoice or part thereof is not paid by the Due Date, the IPND Manager reserves the right to charge the Data User interest on any unpaid amount for the period immediately following the Due Date until payment is made by the Data User, at the rate per annum equal to 3% above the buying rate of a 90-day bank bill offered by Westpac Banking Corporation on the Due Date. The IPND Manager may invoice the Data User at any time for the interest calculated under this clause (including on any subsequent invoice for the Charges).

## Annual Subscription Charges will be:

### invoiced yearly in advance and are non-refundable once paid;

### payable on the Commencement Date and on each yearly anniversary of the Commencement Date;

### based on the IPND Manager’s standard tariff for the supply of IPND Data, as published by the IPND Manager from time to time; and

### subject to an annual adjustment under clause 15.4 to take into account the volume of data provided by the IPND Manager to the Data User.

## For the purpose of calculating the Annual Subscription Charge under Item 1 of Schedule 2, the IPND Manager will provide the Data User with a Bulk Refresh on the Commencement Date, and on each anniversary of the Commencement Date. The Annual Subscription Charge payable by the Data User for a given year will be based on the total volume of Public Numbers provided to the Data User in the relevant Bulk Refresh. For the avoidance of doubt, the IPND Manager will not charge the Data User for any Bulk Refresh provided by the IPND Manager at any other time during the year.

## Communication Charges will be invoiced quarterly in advance and are non-refundable once paid.

## Where the Data User lodges a Special Data Access Request the parties must agree the business requirements for the Special Data Access Request. A Special Data Access Request will incur an Additional Charge. An estimate of the Additional Charges will be provided by the IPND Manager to the Data User. The Data User must agree to pay the Additional Charges before the IPND Manager proceeds with the Special Data Access Request. The IPND Manager will invoice the Additional Charges to the Data User and the Data User must pay the Additional Charges within 28 days of the invoice date. If the Data User does not agree to pay the Additional Charges, then the Special Data Access Request will not proceed, .

## Where there is an increase in the cost to the IPND Manager of providing the Supplied Data to the Data User, the IPND Manager will give the Data User 30 days’ notice of a corresponding increase in the Charges.

## Without limiting the IPND Manager’s rights under clause 15.7, all Charges are subject to a six monthly review by the IPND Manager taking into account any factors (including demand) that the IPND Manager considers may have an impact on its ability to recover the cost, or cost structure, for maintaining, and providing access to, the IPND (pursuant to the IPND Manager’s rights as set out in clause 10(10) of the Licence Conditions). Following such review, the IPND Manager may vary any or all of the Charges, or introduce new Charges, by giving the Data User 60 days’ notice of such varied or new Charges.

## If the Data User requires additional information regarding any Charge, the Data User may seek further information from the IPND Manager.

## If the Data User reasonably believes that it is not liable to pay a particular Charge on an invoice, it may dispute that Charge by contacting IPND Manger using the contact details nominated on the relevant invoice issued by Telstra.

# Dispute Resolution

## The parties agree to resolve any dispute (other than a billing dispute) in accordance with this clause and will not start court or arbitration proceedings except as allowed under this clause or except to seek urgent interlocutory relief.

## For the avoidance of doubt, billing disputes may be resolved in accordance with the process nominated by Telstra as the IPND Manager on invoices issued by Telstra for the Charges.

## The procedure for resolving a dispute (except where a party seeks urgent interlocutory relief) is:

### first, a party shall give notice to the other party about the nature of the dispute (“**Dispute Notice**”) and the parties will seek to negotiate a settlement within 20 Business Days of receipt of the Dispute Notice (“**Negotiation Period**”);

### second, to the extent that the negotiations fail to settle the matter within the Negotiation Period, the parties will seek, within a further 10 Business Days, or such longer period as agreed by the parties, to reach agreement on:

#### a non-litigation, non-arbitration procedure for resolving the dispute (such as mediation, conciliation or independent expert determination);

#### the steps to be taken and when; and

#### the identity of any independent person who will assist the parties and the terms on which that person is to be retained (including the basis on which the independent party’s costs are to be paid and by whom); and

### third, if the parties are unable to reach agreement under clause 12.2(b) within the required timeframe or they do reach agreement and the agreed procedure does not culminate in a settlement of the entire dispute within 30 Business Days of the date of the Dispute Notice, either party may then commence court or arbitration proceedings to resolve remaining issues.

## The parties will engage in the procedure in clause 16.3(a) and (b) in good faith and on a “without prejudice” basis.

# Limitation of Liability

## In this clause 17, **“Prescribed Term”** means terms, conditions and warranties implied by law into some contracts for the supply of goods or services in respect of which the law expressly provides:

### may not be excluded, restricted or modified; or

(b) may be excluded, restricted or modified only to a limited extent.

## Except as expressly provided by Prescribed Terms (if any), the IPND Manager:

### excludes all warranties, express or implied, in relation to the Supplied Data, the supply by it of the Supplied Data, or the performance by it of any other obligation under this agreement; and

### is not liable to the Data User (whether arising in contract, in tort, under statute or in any other way and whether due to negligence, wilful or deliberate breach or any other cause) under this agreement or for any act, omission or event arising out of this agreement for or in respect of any direct, indirect or consequential liability, loss, damage, cost, charge or expense (including in relation to the accuracy, completeness or currency of Supplied Data).

## If the IPND Manager’s liability for breach of a Prescribed Term is capable of exclusion it is excluded.

## If the IPND Manager’s liability for a breach of a Prescribed Term is capable of limitation it is limited (where it is fair and reasonable to do so) at the option of the IPND Manager to:

### in the case of goods, the resupply of those goods, or payment of the cost of resupplying those goods; and

### in the case of the supply of services, the supply of those services again, or the payment of the cost of having those services supplied again.

# Security

## The IPND Manager may require the Data User to provide and maintain a Security or to increase the amount of any existing Security if:

### there is a material adverse change in credit-worthiness of the Data User; or

### the Data User fails to pay any of the Charges by the Due Date.

## The Data User must provide or increase the amount of a Security:

### within 20 Business Days of the IPND Manager’s request under clause 18.1; and

### on terms reasonably acceptable to the IPND Manager.

# Creditworthiness

## The IPND Manager may, from time to time, review the creditworthiness of the Data User. In doing so, the IPND Manager may seek information of advice from an independent person such as a credit provider.

## The Data User agrees to promptly co-operate with any review under clause 19.1 by providing to the IPND Manager any information, authorisation or consent the IPND Manager reasonably requires to conduct these reviews.

# Confidentiality

## Each party acknowledges that the Confidential Information of the other party is valuable to that other party and undertakes to keep such Confidential Information secret, to procure that its representatives keep such Confidential Information secret and to protect and preserve the confidential nature and secrecy of such Confidential Information.

## A party may disclose Confidential Information of the other party on a need to know basis:

### to its legal advisers in order to advise it in relation to its rights under this agreement;

### to any representative of that party, provided that the disclosure is made for the purpose of this agreement and the disclosing party imposes an obligation upon the representative to use that Confidential Information solely for the purposes for which the disclosure is made and to observe appropriate confidentiality requirements in relation to such information; or

### to the extent required by law or by lawful requirement of any government or governmental body, governmental or regulatory authority or agency having authority over that party or any matter related to this agreement; or

### as required by the listing rules of any stock exchange where that party’s securities are listed or quoted; or

### where the disclosing party is Telstra as the IPND Manager, to the ACMA.

## A party may not make press or other announcements or releases relating to this agreement and the transactions the subject matter of this agreement without the approval of the other party to the form and manner of the announcement or release unless and to the extent that the announcement or release is required to be made by the party by law or by a stock exchange.

# General

## **Governing Law**

## This agreement is governed by the law in force in Victoria and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Victoria, and the courts of appeal from them, for determining any dispute concerning this agreement. Each party waives any right it has to object to an action being brought in those courts including, but not limited to, claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

## **Severance**

If the whole or any part of a provision of this agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this agreement has full force and effect and the validity and enforceability of that provision in any other jurisdiction is not affected. However, this clause has no effect if severance alters the basic nature of this agreement or is contrary to public policy.

## **Entire agreement**

This agreement constitutes the entire agreement of the parties about its subject matter and any previous agreements, understandings and negotiations on that subject matter cease to have any effect.

## **Waiver and Variation**

A provision of or a right created under this agreement may not be:

### waived except in writing signed by the party granting the waiver; or

### varied except in writing signed by the parties.

## **Notices**

Any notice, approval, consent or other communication in connection with this agreement:

### must be in writing; and

### must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by email to the addressee as specified in Schedule 1.

## **Costs**

The parties agree that, except as provided in clause 21.7, each will bear its own legal and other costs and expenses of and incidental to the preparation and execution of this agreement.

## **Stamp Duty**

The Data User agrees to bear all stamp duty payable or assessed in relation to this agreement and the transactions contemplated by it.

## **Taxes and GST**

### Subject to the following subclauses, the Data User must pay all Taxes in respect of the Services. As at the date of this Agreement, the charges payable by you are inclusive of any Taxes. The Data User must pay any new or increased Taxes introduced after the date of this Agreement.

### Where GST is imposed on a taxable supply made in connection with this Agreement and the recipient of that supply receives a tax invoice for that supply, the recipient must pay the GST to the supplier (without deduction or set-off) by the tax invoice due date.

### If one party is required to indemnify or reimburse another party (**Payee**) for any cost, loss or expense, the indemnity or reimbursement payable does not include any amount for which the Payee (or an entity grouped with the payee for GST purposes) is entitled to an input tax credit, but will be increased in accordance with sub clause 21.8(b) if the amount payable is consideration for a taxable supply.

### In this Agreement, terms used that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given in that Act.

## **Interpretation**

In this agreement:

### terms used that are defined in the GST Act have the meaning given in that Act, unless the context makes it clear that a different meaning is intended; and

### consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably.

## **Assignment**

A party must not assign, transfer, mortgage or otherwise dispose of or encumber any of its rights or obligations under this agreement without the prior written consent of the other party, which consent is not to be unreasonably withheld.

## **Exercise of rights**

A party may exercise a right, power or remedy at its discretion and separately or concurrently with another right or power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or any right, power or remedy does not prevent its exercise.

## **Events beyond party’s control**

A party will not be liable for any delay or failure to perform its obligations (other than a failure to pay any charges or other moneys) under this agreement to the extent that the delay or failure to perform arises from or in connection with a Force Majeure Event.

The affected party must use its best endeavours to overcome the effect of a Force Majeure Event.

## **Further assurances**

Each party agrees, at its own expense, on the request of the other party, to do everything reasonably necessary to give effect to this agreement and the transactions contemplated by it, including but not limited, to the execution of documents.

## **Indemnities**

Each indemnity in this agreement is a continuing obligation, separate and independent from the obligations of the parties and survives termination of the agreement.

## **Enforcement of Indemnities**

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

## **Inconsistency with Technical Requirements**

In the event of an inconsistency between a term of this agreement and a provision in the Technical Requirements, the Technical Requirements will prevail to the extent of the inconsistency.

**EXECUTED as an agreement**

# Schedule 1 - Information

**Address for service of notices**

 **IPND Manager**:

 IPND Manager

Telstra

Email: ! IPND.Manager@team.telstra.com

 **Data User: [ # insert contact details for Data User]**

# Schedule 2 Charges

**Item 1**: **Annual Subscription Charges (GST exclusive)**

(Total Number of Public Numbers provided to Data User) multiplied by $0.01.

**Item 2**: **Communication Charges (GST exclusive)**

 $3,969 per calendar quarter or part thereof

**Item 3: Additional Charges for Special Data Access Request (GST exclusive)**

This includes charges for Data User non-standard requests, such as creating tailored sampling algorithms.

**Item 4: Additional Technical Support Charges (GST exclusive)**

Charges may be imposed by Telstra as the IPND Manager in circumstances where technical support processes are not followed by the Data User and the IPND Manager is required to provide significant additional support to the Data User.

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